

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY**

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Attorneys for Defendant,
Academy Express, L.L.C.
(also improperly sued as non-existent entity Academy Express, Inc.)

MAXSON GIBBS,

Plaintiff,

v.

ACADEMY EXPRESS, L.L.C.;
ACADEMY EXPRESS, INC.; and JOHN
DOES 1-5 AND 6-10

Defendants.

Civil Action No.: _____
State Court Docket No. ESX-L-3538-22

NOTICE OF REMOVAL
(Electronically Filed)

TO: CHIEF JUDGE AND JUDGES OF THE
UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ON NOTICE TO:

Clerk, Law Division
Superior Court of New Jersey
Essex County Court House
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd.
Newark, NJ 07102
(Via Electronic Filing)

Miriam S. Edelstein, Esq.
Costello & Mains, LLC
18000 Horizon Way, Suite 800
Mount Laurel, NJ 08054
Counsel for Plaintiff
(Via Federal Express and Electronic Filing)

HONORABLE JUDGES:

Defendant Academy Express, L.L.C. (hereinafter Academy” and also improperly sued as non-existent entity Academy Express, Inc.) hereby notices the removal of this action pursuant to 28 U.S.C. § 1441 to the United States District Court for the District of New Jersey, on the following grounds:

TIMELINESS OF REMOVAL

1. On or about June 16, 2022, Plaintiff Maxson Gibbs (“Plaintiff”) commenced a civil action against Academy Express, LLC and non-existent entity Academy Express, Inc. in the Superior Court of New Jersey, Essex County, Law Division, under Docket No. ESX-L-3538-22. Thereafter, without having served the Complaint, Plaintiff filed an Amended Complaint on or about July 14, 2022.

2. Academy first received notice of the civil action on July 18, 2022, when it was served with a copy of the Summons, First Amended Complaint, and Track Notice (Exhibit A). At that time, Academy was also served with the Summons directed to non-existent entity Academy Express, Inc. (Exhibit A).

3. Accordingly, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal has been timely filed within thirty (30) days after first notice to Academy of the civil action.

BASIS FOR REMOVAL

4. This cause is a civil action within the meaning of the Acts of Congress relating to removal of causes.

5. In Counts VI and VII of the First Amended Complaint, Plaintiff alleges that Academy violated federal law, namely the Family and Medical Leave Act, 29 U.S.C. 2601, *et seq.*

6. The First Amended Complaint also includes state law claims for alleged violations of the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 *et seq.* and the New Jersey Family Leave Act, N.J.S.A. 34:11B-1, *et seq.*, as well as asserts state common law claims.

7. The above-described action is a civil action of which this Court has original jurisdiction under the provisions of Title 28, United States Code, Section 1331 (Federal question), in that Plaintiff asserts a civil action based on a claim or right “arising under the Constitution, laws, or treaties of the United States.”

8. Because the United States District Court has original jurisdiction over Plaintiff’s claims, this case is subject to timely removal under 28 U.S.C. § 1441 and 1446.

9. The pendent state law claims arise from a common nucleus of operative facts which may be removed to the United States District Court pursuant to 28 U.S.C. § 1441(c).

10. There are no other named Defendants.

11. Academy has not previously sought similar relief.

CONSENT TO REMOVAL

12. All named Defendants consent to this removal.

NOTICE / SERVICE

13. Pursuant to 28 U.S.C. § 1446, copies of this Notice of Removal are being served, via electronic filing through the Superior Court of New Jersey upon the Clerk of the Law Division of the Superior Court, Essex County, New Jersey and Plaintiff’s Counsel.

WHEREFORE, Defendant Academy Express, L.L.C. (also improperly sued as non-existent entity Academy Express, Inc.) respectfully requests that this Honorable Court take jurisdiction of this action and issue all necessary orders and process to remove said action from the Superior Court of New Jersey, Essex County to the United States District Court for the District of New Jersey.

Respectfully submitted,

APRUZZESE, McDERMOTT,
MASTRO & MURPHY, P.C.
Attorneys for Defendant,
Academy Express, L.L.C.
(also improperly sued as
non-existent entity Academy Express, Inc.)

By: 

Lisa Barré-Quick, Esq.

Dated: August 15, 2022

LOCAL CIVIL RULE 11.2 CERTIFICATION

I, Lisa Barré-Quick, Esq., counsel for Defendant Academy Express, LLC (also improperly sued as non-existent entity Academy Express, Inc.) certify that to the best of my knowledge the claims in the matter in controversy are not currently the subject of any other judicial or administrative proceedings besides the captioned New Jersey Superior Court action.

APRUZZESE, McDERMOTT,
MASTRO & MURPHY, P.C.
Attorneys for Defendant,
Academy Express, L.L.C.
(also improperly sued as
non-existent entity Academy Express, Inc.)

By: 

Lisa Barré-Quick, Esq.

Dated: August 15, 2022


CERTIFICATION OF SERVICE

I hereby certify that on August 15, 2022, I am filing copies of this Notice of Removal with service as follows:

Clerk, Law Division
Superior Court of New Jersey
Essex County Court House
Hall of Records, Room 201
465 Dr. Martin Luther King Jr. Blvd.
Newark, NJ 07102
(Via Electronic Filing)

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Counsel for Plaintiff
(Via Electronic Filing and Federal Express)

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Dated: August 15, 2022